

Assembly Joint Resolution

No. 8

Introduced by Assembly Member Monning

February 25, 2009

Assembly Joint Resolution No. 8—Relative to marine mammal protection.

LEGISLATIVE COUNSEL'S DIGEST

AJR 8, as introduced, Monning. Marine mammal protection: swordfish importation.

This measure requests the United States government to restrict swordfish imports unless and until there is a process by which a nation seeking to export swordfish or swordfish products to the United States provides reasonable proof of the effects on marine mammals of the commercial fishing technology used to obtain the swordfish or swordfish products, and the National Marine Fisheries Service receives that proof and determines that it demonstrates that the swordfish or swordfish products to be imported were not caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of United States standards.

Fiscal committee: no.

1 WHEREAS, California is a coastal state that is dedicated to the
2 protection of our marine mammal populations, fisheries, and ocean
3 resources; and

4 WHEREAS, California and the United States public have a
5 strong interest in healthy global marine mammal populations; and

6 WHEREAS, Bycatch in some fisheries poses a significant threat
7 to many populations of marine mammals around the world and

1 scientists estimate that the global bycatch of marine mammals is
2 likely to number in the hundreds of thousands each year; and

3 WHEREAS, Scientific experts from Duke University and the
4 University of New Hampshire concluded in 2002 that, “incidental
5 capture in fishing operations is the major threat to whales, dolphins
6 and porpoises worldwide. Several species and many populations
7 will be lost in the next few decades if nothing is done”; and

8 WHEREAS, Congress recognized that some types of fishing
9 pose a grave threat to marine mammal species when it passed the
10 Marine Mammal Protection Act (16 U.S.C. Secs. 1361 et seq.)
11 (MMPA), a law that imposes restrictions on fishery-related
12 mortalities and injuries of marine mammals and has led to the
13 establishment of significant regulatory protections designed to
14 reduce their bycatch in United States domestic fisheries; and

15 WHEREAS, Conservation measures have been effective in
16 reducing marine mammal bycatch in United States fisheries,
17 resulting in a 40 percent decrease between 1990 and 1999; and

18 WHEREAS, Despite recognition of the importance of reducing
19 bycatch of marine mammals in fisheries, our knowledge of the
20 global extent, nature, and impacts of direct interactions between
21 marine mammals and foreign fisheries is limited; and

22 WHEREAS, Congress also realized that marine mammal
23 conservation could not be accomplished through regulation of
24 United States fishermen alone, thereby mandating in Section
25 101(a)(2) of the MMPA that United States economic power be
26 utilized to achieve conservation of marine mammals outside United
27 States waters; and

28 WHEREAS, Section 101(a)(2) of the MMPA states that the
29 United States government, “shall ban the importation of
30 commercial fish or fish products that have been caught with
31 commercial fishing technology that results in the incidental kill or
32 incidental serious injury of marine mammals in excess of United
33 States standards”; and

34 WHEREAS, The MMPA directs that the Secretary of Commerce
35 “shall insist on reasonable proof from the government of any nation
36 from which fish or fish products will be exported to the United
37 States of the effects on ocean mammals of the commercial fishing
38 technology in use for such fish or fish products exported from such
39 nation to the United States”; and

1 WHEREAS, The United States imports over 10,000 metric tons
2 of swordfish and swordfish products each year, making it one of
3 the top swordfish consumers in the world; and

4 WHEREAS, The United States received swordfish imports from
5 approximately 43 countries between 2005 and 2007, inclusive, yet
6 the United States government reports that it has no information
7 from any of these countries regarding their fishing practices, take
8 of marine mammals, or any other information to satisfy the
9 requirements of Section 101 of the MMPA as of December 2007;
10 and

11 WHEREAS, The responsible United States agencies cannot
12 confirm whether countries importing swordfish into the United
13 States operate under a regulatory scheme that is comparable to
14 United States standards without demanding, receiving, and
15 assessing the proof required under Section 101(a)(2) of the MMPA;
16 and

17 WHEREAS, It therefore appears the United States has imported
18 swordfish without obtaining the MMPA-mandated proof that the
19 swordfish was caught in compliance with United States standards
20 for the last 35 years; and

21 WHEREAS, Available information indicates that many of the
22 countries exporting swordfish to the United States fail to regulate
23 their fisheries in a manner that protects marine mammals, transship
24 fish from other poorly regulated and destructive fisheries, or may
25 not track bycatch data at all; and

26 WHEREAS, Collection and reporting of marine mammal
27 bycatch in foreign fisheries under Section 101(a)(2) of the MMPA
28 could help assist management organizations, such as regional
29 fisheries organizations, in assessing fishery interaction mitigation
30 strategies and directing conservation efforts; and

31 WHEREAS, United States swordfish fishermen compete with
32 swordfish imports from many poorly regulated foreign fishermen
33 operating without comparable and appropriate restraints on marine
34 mammal bycatch; and

35 WHEREAS, Enforcement of Section 101 of the MMPA would
36 provide an incentive for foreign fishing fleets to implement similar
37 protective measures and gear requirements as United States
38 fisheries, reducing foreign fleets' competitive advantage over
39 United States fishermen; now, therefore, be it

1 *Resolved by the Assembly and the Senate of the State of*
2 *California, jointly,* That the Legislature of the State of California
3 requests the National Marine Fisheries Service and Department
4 of the Treasury, as appropriate, to carry out the nondiscretionary
5 duties imposed by Section 101(a)(2) of the Marine Mammal
6 Protection Act and immediately ban the importation of swordfish
7 or swordfish products from any and all countries that have not
8 satisfied the MMPA Section 101(a)(2) requirement; and be it
9 further

10 *Resolved,* That the Legislature of the State of California requests
11 the National Marine Fisheries Service to require nations wishing
12 to export swordfish or swordfish products to the United States to
13 provide information on the fishing methods used to catch the
14 swordfish or swordfish products, programs in place to protect
15 marine mammals from incidental harm by the fishery, and
16 effectiveness of fishery monitoring and enforcement activities,
17 and consider that information in making determinations under
18 Section 101(a)(2) of the MMPA; and be it further

19 *Resolved,* That the Legislature of the State of California requests
20 the United States government to restrict swordfish imports unless
21 and until there is a process by which any nation seeking to export
22 swordfish or swordfish products to the United States provides
23 reasonable proof of the effects on marine mammals of the
24 commercial fishing technology used to obtain the swordfish or
25 swordfish products, and the National Marine Fisheries Service
26 receives that proof and determines that it demonstrates that the
27 swordfish or swordfish products to be imported were not caught
28 with commercial fishing technology that results in the incidental
29 kill or incidental serious injury of marine mammals in excess of
30 United States standards; and be it further

31 *Resolved,* That the Chief Clerk of the Assembly transmit copies
32 of this resolution to the President of the United States, to the
33 Secretary of Commerce, to the Secretary of the Treasury, to the
34 National Marine Fisheries Service, to the Speaker of the House of
35 Representatives, and to each Senator and Representative from
36 California in the Congress of the United States.

O